

Memorandum

To: Financial Lenders/Lienholders of Motor Vehicles

From: Massachusetts Registry of Motor Vehicles

Date: October 25, 2004

Re: New State Enforcement Procedure and Penalties for Late Lien Release

- 1. New Law:** Effective November 1, 2004, a new state law takes effect that requires the Registrar to assess and enforce monetary penalties against lienholders. Lienholders who fail to timely release a lien and forward the assigned Title to the dealer or vehicle owner after having received payment in satisfaction of the security interest may be penalized. Chapter 243 of the Acts of 2004 amends Massachusetts General Law Chapter 90D, Section 24, (MGL c.90D, §24) creates a new Section 24A to establish an enforcement procedure, and amends Chapter 90D, Section 32 to add a subsection (c) to create monetary penalties.
- 2. When Payment Deemed Cleared:** A third paragraph is added to c.90D, §24 under the new law to say that a payment in satisfaction of the security interest is deemed cleared immediately upon receipt by a lienholder if the amount owed is tendered in any of the following:

 - cash
 - certified check
 - cashier's check
 - teller's check
 - intra-bank or inter-bank transfer of funds
 - electronic transfer of funds.
- 3. Required Time Period to Release Liens:** The first paragraph of MGL c.90D, §24 is unchanged and requires that:

Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, the lienholder shall, **within three days after demand and, in any event, within ten days**, execute a release of his security interest, in the space provided therefore on the certificate or as the registrar shall prescribe, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person who delivers to the lienholder an authorization from the owner to receive the certificate. (Emphasis added).

(The second paragraph applies to liens held by a prior lienholder)
- 4. Three-day Versus Ten-day Periods:** The three-day period applies whether a lienholder has a paper Title in its possession or has received notification electronically of the issuance of a motor vehicle Title. A "demand" triggering the three-day period is made when a motor vehicle

dealer or insurer sends the lienholder a completed *Assignment and Authorization for Payoff* along with payment of the outstanding obligation. A “demand” is also made when the owner of the Titled-vehicle makes payment of the amount of the outstanding obligation and uses words which a reasonable person would understand to mean that the owner desires to receive the released lien and Title as soon as payment is received. The 10-day period applies when the vehicle’s owner, as listed on the Title, pays off the amount of the outstanding obligation but does not use words indicating that time is of the essence in receiving the released lien and Title.

5. Enforcement Beginning November 1, 2004: On and after that date, if the Registrar receives a complaint of the failure of a lienholder to execute a lien release in the time required by MGL c.90D, §24, the Registrar **may**:

- (i) send a written **Notice** to the lienholder indicating a complaint of non-compliance has been received and urging the lienholder to follow the law as stated in MGL c.90D, §24 if it has not already done so, e.g. three (3) days to release the lien on demand or 10 days following payment if no properly worded demand has been made;
- (ii) state in the **Notice** that a lienholder’s lack of compliance in the allowed time will mean a civil administrative penalty may be imposed. The Registrar is authorized to consider numerous factors in determining the amount of a civil penalty including the lienholder’s past non-compliance. **The minimum civil administrative penalty authorized by law is \$500 for a first offense but the other factors may substantially increase the amount owed.** The law allows the Registrar to dispense with written **Notice** and impose a civil administrative penalty if she is satisfied that the lienholder’s action is part of a pattern of non-compliance or indicates a willful disregard of the statute.
- (iii) assess a civil administrative penalty if the Registrar is satisfied that the lienholder has not complied with the law in the time required after **Notice** has been sent (unless no Notice was required). The Registrar may set the civil administrative penalty **from the date of the Notice** and notify the lienholder of the amount and the due date for payment in full. Notification of the assessment of a civil administrative penalty will include information concerning the lienholder’s right to a Hearing at the Registrar’s offices in Boston if requested within the time required. Failure to respond within 21 days of the Notice date constitutes waiver of any right to a Hearing and any objection to the amount of the civil administrative penalty; and
- (iv) triple the amount of the assessed civil administrative penalty if the lienholder pays the original assessment late or fails to pay the entire sum when due. The law also authorizes the imposition of costs, interest, attorney’s fees and additional costs and attorney fees incurred in collection.

A decision by the Registrar is deemed final and any appeal is through the Massachusetts court system under the provisions of MGL c.30A.

Questions should be directed to:	Director, Title Division Registry of Motor Vehicles P.O. Box 199136 Boston, MA 02119-9136 617-351-9458
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